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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

January 5, 2004

The Honorable B. Lee Miller
Municipal Court Judge, City of Greenwood
Post Office Box 40
Greenwood, South Carolina 29648-0040

Dear Judge Miller:

In a letter to this office you referenced the situation involving defendants who fail to complete a pretrial intervention program (PTI) and questioned how these cases are handled when returned to the municipal court for prosecution. You indicated that the solicitor's office has lost all contact with these individuals and had not been able to contact them at the address or telephone number supplied when these individuals entered PTI. You indicated that these individuals were advised that if they failed to complete the PTI program, their cases would be returned to municipal court for prosecution and each signed a form which contained language of this nature.

Pursuant to S.C. Code Ann. Section 17-22-150 (2003), in the event an offender successfully completes a PTI program, there is a noncriminal disposition of the charge or charges placed against the offender. However, as set forth in subsection (b),

In the event the offender violates the conditions of the program agreement: (1) the solicitor may terminate the offender's participation in the program; (2) the waiver executed pursuant to Section 17-22-90 shall be void on the date the offender is removed from the program for the violation and (3) the prosecution of pending criminal charges against the offender shall be resumed by the solicitor.

As to the disposition of charges as to a defendant who cannot be located or contacted, as we discussed in our telephone conversation, you should contact the solicitor's office for guidance as to how they wish to proceed on a particular case. One possible means of proceeding would be to send that individual a certified letter to the last known address supplied to the solicitor's office which would provide a court date for the disposition of that defendant's case. Such letter would notify the defendant that he would be tried in his absence if he fails to appear and a bench warrant would be issued following the trial in absence assuming a conviction was obtained. Assuming the defendant does not appear, he could be tried in his absence and a bench warrant issued for his arrest. As I mentioned in our conversation, when that defendant executed a bail bond, he was already put on notice of the potential for his being tried in his absence if he failed to appear for court. Also, you

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mentioned that these individuals signed a form when entering PTI which informed them that if they failed to complete PTI, their case would be returned to municipal court for prosecution. In the future, additional language could be considered to be included in these forms which would state specifically that if the individual, upon being notified at the last address available to the court, fails to appear, he would be tried in his absence and a bench warrant issued.

If there is anything further, please advise.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles H. Richardson", followed by a horizontal line.

Charles H. Richardson
Senior Assistant Attorney General